CF0000064583

CrA 1447/2000 (02)

APPEAL OF PRISONER

No. 1169/2000 Name मदेश्वर s/o लक्ष्मण

Father's name लक्ष्मण निवा सरगुजा म०प्र०

Residence ग्रा०-कोदिया, थाना-लखनपुर Age 35 वर्ष

Sentenced 302 भा.दं.वि. On 4-4-2000

Under section 5-FH-284/99 by ए.डी.जे.एस. अम्बिकापुर
धारा 302 भा.दं.वि. अपराधित धारा 324 भा.दं.वि.
3 वर्षकठोर

it is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appeliate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with-in seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practiotioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1. Date of Application for copy of Judgement 4-4-2000
2. Date of which copy received 4-4-2000
3. Date on which appeal sent
4. Whether the prisoner wished to be represented or not-Yes/No.

No. 1169/2000 Name मदेश्वर s/o लक्ष्मण

Continued in जिला Jail अम्बिकापुर (सरगुजा)

No. 834 Dated 5/4/2000 ~~199~~ 2000

Forward to the CHIEF JUDICIAL MAGISTRATE Ambikapur to gather which a copy of order passed in the case for favour of transmission to the proper Appelliate Court.

(सेशन : जिला पतिलिपि : 4 (चार पन्ने में))

Superintendent Jail 5/4/2000

Date of receipt in C.J.M's Office 7-4-2000

Date of receipt record to accompany 15-5-2000

Memo of Appeal of the Appeliate Court उच्च न्यायालय म.प्र. जबलपुर

No. 9 Dated 15 199 5-2000

Forwarded to the उच्च न्यायालय मध्य प्रदेश जबलपुर

C.J. Magistrate 15/5/00

Date of receipt in Appeliate Court

//SURGUJA TY.//

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(16)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CA..1447/... **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and
Hon'ble Mr. Sunil Kumar Sinha, J.

10-1-2007

Mr. Anand Mohan Tiwari, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor for the State/ respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag.C.J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 4th April, 2000, passed by the 1st Additional Sessions Judge, Ambikapur, in Sessions Trial No.284/1999, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

The case of the prosecution, in brief, is that at 4 p.m. on 16-7-1999, the accused assaulted his wife Janki (since deceased) with fists & kicks on her stomach, backside, chest and the accused informed to one Pooran Yadav about the incident. Pooran Yadav saw that the condition of Janki was serious, therefore, he advised the accused to take her to the hospital. When Kailash (PW-4), Manmohan & the accused were taking the deceased to the Ambikapur hospital, she succumbed to the injuries sustained by her, on way and thereafter, they brought the body back. The matter was reported in Police Chowki Bario and based on the merg

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(17)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A.1447.. **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

intimation Ex.P-7, the first information report Ex.P-9 was registered in Police Station: Dhaurpur. The Investigating Officer after giving notice Ex.P-1 to the Panchas, prepared the inquest Ex.P-2 on the body of Janki. The body of Janki was sent under Ex.P-11 to the Government Hospital, Rajpur for post-mortem, where Dr. A.P. Gupta (PW-15) conducted post-mortem and prepared the report Ex.P-18. He opined that the cause of death was syncope due to traumatic injury of vital organ, stomach, intestine and rupture of mesentery intra peritoneal bleeding. The Investigating Officer prepared the site plan Ex.P-12 of the place of occurrence.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Ambikapur, who in turn, committed the case to the Sessions Judge, Ambikapur, from where learned Additional Sessions Judge, Ambikapur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused, examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and said that he is innocent, he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing respective counsel, convicted and sentenced the accused as aforementioned.

(18)

XI-HC-78

मामला क्रमांक Cr.A./1447/..... **सन् 200** 0

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

We have heard Mr. Anand Mohan Tiwari, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor on behalf of the State/respondent.

Learned counsel for the appellant has not disputed the homicidal death of Janki. Apart form the evidence of eyewitnesses namely, Rajaram (PW-1), Birjhu (PW-2), who are sons of the deceased and the accused & Smt. Jagni Bai (PW-3), mother-in-law of the accused, as also the oral dying declaration made by the deceased before Manmohan (PW-4), Smt. Sonmet (PW-5), Kaila (PW-6) & Tirath (PW-7) and the medical evidence of Dr. A.P. Gupta (PW-15), it is established that the death of Janki was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, learned counsel for the appellant did not dispute this fact also. We have perused the evidence of Rajaram (PW-1), son of the deceased and the accused. He has stated in his evidence that he was at the residence on the fateful night, he saw his father was assaulting his mother with a wooden toy in the shape of plow as a result of which his mother ~~received~~ sustained injuries and he went to one Bhagnawa to inform about the incident, thereafter, Bhagnawa came there. The above evidence is corroborated by Birjhu (PW-2), another son of the deceased and the accused. He has stated in his evidence that on the fateful night his father assaulted his mother on face and backside of the body, as a result of which she sustained injuries and fell down. The doctor was also called, but he could not treat his mother. Thereafter, people took

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...G.A.1447/.. **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her mother to the hospital, but she died on the way to the hospital. Smt. Jagni Bai (PW-3), mother-in-law of the accused, has also corroborated the above evidence of these witnesses and stated about the injuries inflicted by the accused. In cross-examination of these witnesses, defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. Apart from that, from the evidence of Manmohan (PW-4), Smt. Sonmet (PW-5), Kaila (PW-6), Tirath (PW-7), Manoj (PW-8) & Kusum (PW-11), it is established that deceased Janki made oral dying declaration before these witnesses regarding the injuries inflicted by the accused on her body. All these witnesses are independent witnesses and defence has not been able to elicit any circumstance which discredits the evidence of these witnesses. Therefore, from the above evidence of eyewitnesses and the witnesses before whom Janki made oral dying declaration, it is established that the accused was the author of the crime in question.

Learned counsel for the appellant argued that the accused assaulted the deceased in a quarrel and there was no intention of the accused to cause the death of his wife Janki, as such, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, learned Additional Public Prosecutor supported the judgment of the trial Court.

In order to appreciate the argument advanced by learned counsel for the appellant, we have perused the evidence. Rajaram

उच्च न्यायालय, छत्तीसगढ़,,बिलासपुर

मामला क्रमांक ..G.A.1447.. **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	(PW-1), Birjhu (PW-2) & Smt. Jagni Bai (PW-3) are the eyewitnesses. Perusal of their evidence reveals that there is nothing on record that the accused assaulted the deceased in a sudden quarrel, rather their evidence shows that the deceased even had not said anything or attempted to save herself, the accused continuously assaulted her on various parts of the body as a result of which her intestine was ruptured and there was profuse bleeding and due to syncope the deceased died. Therefore, form the above evidence and the nature of the injuries sustained by the deceased, it is writ large that the accused mercilessly continued to beat the deceased with intention to cause her death. In the result, we do not find any illegality or infirmity in the judgment of the trial Court convicting the accused/appellant for commission of offence under Section 302 of the I.P.C. The appeal is devoid of merit, same is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **SUNIL KUMAR SINHA** **Judge**
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